Supreme Court, U.S.
FILED
MAY 19 1995
OFFICE OF THE CLERK

942070

IN THE

Supreme Court of the United States

October Term, 1994

JOHN A. LANGDALE, PETITIONER

v

HUNTERDON COUNTY AND COMMUNITY CARE ASSOCIATION OF HUNTERDON, RESPONDENTS

On Petition For Writ Of Certiorari To The New Jersey Supreme Court (Docket #38,972 Denial Of Petition For Certification)

PETITION FOR WRIT OF CERTIORARI

JOHN A. LANGDALE, PETITIONER, PRO SE
702 WEST MAIN STREET (APT. 3)
ELIZABETH CITY, NC 27909

3298

QUESTIONS PRESENTED FOR REVIEW

Should a two-year statute of limitations on Workers' Compensation claims in New Jersey be applied in cases where an employer is quite possibly guilty of having misrepresented the processing of a claim so as to delay and destroy it by that very statute of limitations?

New Jersey Statute 34:15-51. Claimant required to file petition within two years; contents; minors

Every claimant for compensation under Article 2 of this chapter (§34:15-7 et seq.) shall, unless a settlement is effected or a petition filed under the provisions of 34:15-50 of this Title, file a petition in duplicate with the division in Trenton, within 2 years after the date on which the accident occurred, or in case an agreement for compensation has been made between the employer and the claimant, then within 2 years after the failure of the employer to make payment pursuant to the terms of such agreement; or in case a part of the compensation has been paid by the employer, then within 2 years after the last payment of compensation except that repair or replacement of prosthetic devices shall not be construed to extend the time for filing of a claim petition . . . .

Does not such a statute of limitations, when applied even in cases of employer fraud, abet the employer's chicanery and abridge a citizen's right to compensation for work-related injuries, this violating The Constitution of The United States at Amendment XIV?

And where a trail judge further errs by eight (8) years as to the date when employer misrepresentation and obstruction were discovered, should not the appellate levels have corrected so gross a miscalculation below when so critical in determining the date upon which statutory deadline fell?

PETITION FOR WRIT OF CERTIORARI

RULINGS BELOW

Brevity is served by focusing on court decrees rather than petitioner-plaintiff's history, catastrophic damages, and allegations that, after a disabling work accident, the employer-respondents obstructed his Workers' Compensation claim beyond a strict New Jersey two-year statute of limitations thereby deceiving this petitioner and defrauding him of disability benefits. Said court decrees are as follows since petitions of exemplary succinctness are exempted from indexes:

APPENDIX 2
A. Supreme Court of N.J.'s denial of petition for certification (p. A-2 herein)
B. N.J. Appellate Division's decision and opinion affirming below (p. A-3 - A-7)
C. Two orders of dismissal issued by Hunterdon County's court (p. A-9 - A-11)

JURISDICTION

The order appealed from at Appendix 2A was filed on February 28, 1995 making this May 17, 1995 filing timely (cf. Appendix 1).

28 USC 1257 stipulates, "Final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court as follows: (3) By writ of certiorari . . . where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution . . . ."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

New Jersey Statute 34:15-51 leaves applicants twenty-four (24) months from the date of their work accident to file a claim, initially with their employer or, next, with the Division of Workers' Compensation. Because NJS 34:15-51 apparently provides for absolutely no exceptions, Hunterdon County's judge could bar this claim first and foremostly by NJS 34:15-51 (at Appendix 2C, Point 2, here p. A-10) despite the charge of employer fraud.

So, as it reads, NJS 34:15-51 begs abuse by unscrupulous employers: Monstrous though it be, employers can feign the processing of a claim with impunity as long as they can delay it beyond NJS 34:15-51's deadline. When any statute immunizes a guilty party, exactly at that point the Public welfare is being trashed by its own body of Law dishonoring the Preamble's guarantee; and exactly there Amendment XIV, Section 1 is also being assaulted ("No State shall make or enforce any law which shall abridge the privileges . . . of citizens . . . .").

NJS 34:15-51 is, therefore, repugnant to the Constitution unless it is amended to suspend its deadline in cases of fraudulent claim obstruction committed by an employer.

As far as petitioner could ascertain by contacting The New Jersey Supreme Court's clerk, no certification is made to its Attorney General regarding a State statute's constitutionality being questioned unless the State itself is a party, this in the event United States Supreme Court Rule 29.4(c) and 28 USC 2403(b) are applicable.

STATEMENT OF THE CASE

Broken by work accident and employer-respondents' avowed malfeasances, reduced thereby to abject poverty, Petitioner Dr. Langdale went before your United States District Court for The District of Columbia in 1989. After Hunterdon County repudiated The Court's jurisdiction, ordered there were respondent's dismissal and remand to The Social Security Administration.

Prosecution was taken into Hunterdon County, petitioner charging respondents with trying to kill his Workers' Compensation claim by obstructing it beyond an actively concealed 24-month statutory limit. Whereas employer-respondents had full knowledge (in their receipt of a police accident report, records of dwindling work hours, petitioner's resignation letter citing disability, etc.) and whereas employer-respondents found themselves undeniably applied to well prior to NJS 34's October, 1979 deadline, it was proven below by Appendix 4 here (p. A-19) that respondents at very least violated NJS 17:29B-4(9).

The pith of what ensued is Appendix 2. Refusing to recognize any application whatsoever to the employer as sufficient, Hunterdon's court insisted NJS 34:15-51 requires an injured worker apply directly to the State's Division of Workers' Compensation within 24 months regardless of whether the employer is guilty of criminal misrepresentation, regardless that such contributes to a claimant's illness, regardless of mental disorder. The same county judge foiled prosecution of respondents by entering an eight (8) year error into the record, documented here by Appendix 5, this despoiling the right to prosecute under NJS 2A: 14-1.

That eight-year error was shown to the Appellate Division while the constitutionality issue was first raised with New Jersey's Supreme Court.

BEST AVAILA

ARGUMENT

Whereas, until amended so as not to bar claims whose processing was employer-obstructed, NJS 34:15-51 will persist in its fiendish inequity and recalcitrant repugnance to the Constitution, a writ should issue pursuant to 28 USC 1257. Once Hunterdon's court's citation of NJS 34:15-51 is recognized as unconstitutional, then its eight-year error as to when employer misrepresentation came to light becomes fatal to its order, by NJS 2A:14-1 a 1989 discovery deserving trial to this very day.[1]

Whatever the excuses below, working New Jerseyites have now a millstone hung around their necks; within what was supposed to be a compassionate law, there exists this statute now carved in stone which both abets and immunizes harmful employers who defraud their work-injured victims. A Federal message must be sent employed Americans: their rights shall triumph over those fat-cat predators wishing to get away with mayhem and murder else the economic backbone of at least New Jersey -- its workforce -- will be broken as all vestiges of master-servant good faith are made mockery of.

In conclusion, though presumptuous under circumstances less extreme, this petition respectfully proposes there is an ethical duty to intercede here by the Law at 28 USC 1257, out of fear for our Constitution's sovereignty, and from both moral outrage and a humane concern for the wellbeing of America's workers.

Under 28 USC 1332, remand to a United States District Court is begged so as to spare this proceeding from contamination by local favoritisms.

Dated: May 9, 1995 John A. Langdale, Petitioner, Pro Se

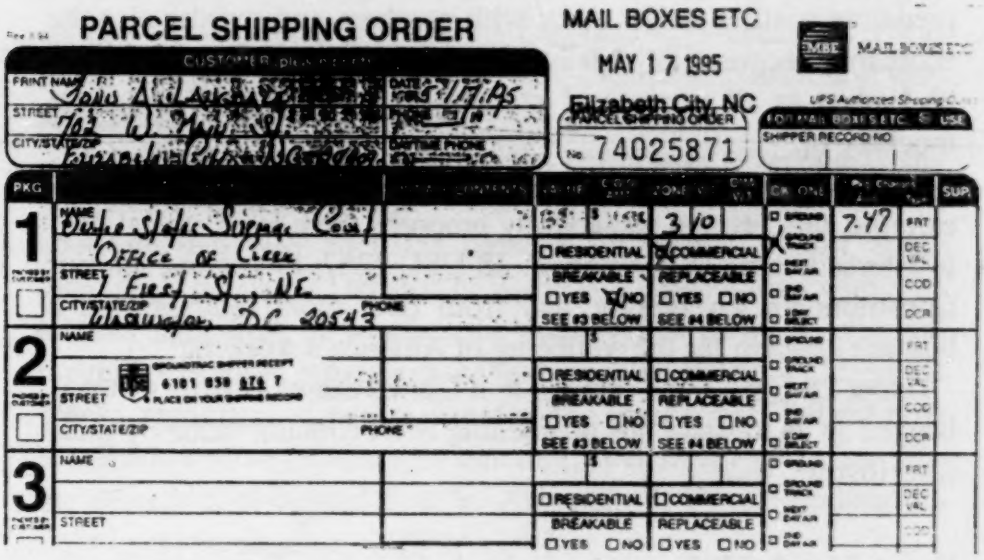
1 NJS 2A: 14-1's six year statute of limitations does not begin to run until any malfeasance is uncovered from its concealment (Sun Building & Loan Ass'n of Newark v. Rashkes, 119 N.J.Eq. 443, 183 A. 274; Patrice v. Groves, 115 N.J.Eq. 208, 169 A. 701; French v. U.S. Fidelity & Guarantee Co., D.C., 88 Fed. Supp. 714; Kohler v. Barnes, 123 N.J.Sup. 69, 301 A.2d 474; Joseph v. Lesnevich, 56 N.J.Sup. 340, 153 A.2d 349).

LE COPY

APPENDIX 1

PROOF OF TIMELY FILING

Whereas Rule 13 of The Supreme Court of The United States allows 90 days after the entry of judgment, that judgment entered on the 27th day of February, 1995 (cf. Appendix 2A, p. A-2), the proof of mailing below establishes timeliness of this filing.


PARCEL SHIPPING ORDER

MAIL BOXES ETC

MAY 17 1995

Elizabeth City, NC

MBE MAIL BOXES ETC

PARCEL SHIPPING ORDER No 74025871

UPS Authorized Shipping Outlet

FOR MAIL BOXES ETC. USE

SHIPPER RECORD NO.

CUSTOMER please print

PRINT NAME: John A. Arnold

STREET: 702 W. Main St.

CITY/STATE/ZIP: Elizabeth City, NC 27909

DATE: 5-17-95

PHONE

DAYTIME PHONE

PKG							
1	NAME: United States Supreme Court Office of Clerk STREET: 1 First St., NE CITY/STATE/ZIP: Washington, DC 20543 PHONE		$	3 10	☐ RESIDENTIAL ☒ COMMERCIAL BREAKABLE ☐ YES ☒ NO SEE #3 BELOW REPLACEABLE ☐ YES ☐ NO SEE #4 BELOW	☒	7.47
2	NAME 6101 830 874 7 STREET CITY/STATE/ZIP PHONE		$		☐ RESIDENTIAL ☐ COMMERCIAL BREAKABLE ☐ YES ☐ NO SEE #3 BELOW REPLACEABLE ☐ YES ☐ NO SEE #4 BELOW	☐	
3	NAME STREET		$		☐ RESIDENTIAL ☐ COMMERCIAL BREAKABLE ☐ YES ☐ NO REPLACEABLE ☐ YES ☐ NO	☐	

APPENDIX 2A

SUPREME COURT OF NEW JERSEY
C-599 September Term 1994
38,972

JOHN A. LANGDALE,
Plaintiff-Petitioner,

v. ON PETITION FOR CERTIFICATION

HUNTERDON COUNTY and COMMUNITY CARE ASSOCIATION OF HUNTERDON COUNTY,
Defendants-Respondents. Filed Feb. 28, 1995

APPENDIX 2

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-5941-91 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 27th day of February, 1995.

s/Stephen Townsend
CLERK OF THE SUPREME COURT

APPENDIX 2B
APPELLATE DIVISION DECISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-5941-91T3

JOHN A. LANGDALE,
Plaintiff-Appellant,

v.

s/ R. Emille Cox
Clerk

HUNTERDON COUNTY and COMMUNITY CARE ASSOCIATION OF HUNTERDON COUNTY,
Defendants-Respondents.

Filed May 26 1994

Submitted: April 27, 1994 - Decided: May 26, 1994

Before Judges Havey and A.M. Stein.

On appeal from the Superior Court of New Jersey, Law Division, Hunterdon County.

John A. Langdale, appellant pro se.

Gebhardt & Kiefer, attorneys for respondent Hunterdon County (Judith A. Kopen on the brief).

McDonough, Korn & Eichhorn, attorneys for respondent Community Care Association of Hunterdon County (James R. Korn, of counsel; Anthony M. Tracy on the brief).

PER CURIAM

The order of the Law Division entering summary judgment in favor of defendants dated May 15, 1992, is affirmed substantially for the reasons set forth by Judge Bernhard in his oral opinion of May 1, 1992.

Affirmed.

s/ R. Emille Cox
Clerk

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-5941-91T3

JOHN A. LANGDALE,
Plaintiff-Appellant,

v.

HUNTERDON COUNTY and COMMUNITY CARE ASSOCIATION OF HUNTERDON COUNTY,
Defendants-Respondents.

Filed May 26, 1994

s/ R. Emille Cox
Clerk

Submitted: April 27, 1994 - Decided: May 26, 1994

Before Judges Havey and A.M. Stein.

On appeal from the Superior Court of New Jersey, Law Division, Hunterdon County.

John A. Langdale, appellant pro se.

Gebhardt & Kiefer, attorneys for respondent Hunterdon County (Judith A. Kopen on the brief).

McDonough, Korn & Eichhorn, attorneys for respondent Community Care Association of Hunterdon County (James R. Korn, of counsel; Anthony M. Tracy on the brief).

PER CURIAM

The order of the Law Division entering summary judgment in favor of defendant Community Care Association of Hunterdon County dated May 15, 1992, is affirmed substantially for the reasons set forth by Judge Bernhard in his oral opinion of May 1, 1992.

By prior order dated November 8, 1991, Judge Bernhard entered summary judgment in favor of defendant Hunterdon County because plaintiff was not a county employee. The basis for plaintiff's assertion that he was an employee of Hunterdon County at the time of the accident is because the 1980 Flemington telephone directory listed the Community Care Association of Hunterdon under the general Hunterdon County listings.

The judge's explanation for dismissing Hunterdon County is not available because the tape used to record the hearing could not be transcribed because it was blank.

Hunterdon County's moving papers included the certificate of incorporation of the Community Care Association of Hunterdon. Hunterdon County is not mentioned in the certificate of incorporation. Defendant also provided an uncontradicted affidavit of John W. Anaya who is the president of the Community Care Association of Hunterdon. In the affidavit, Anaya explained the origin of the Association.

In 1975, the Hunterdon County Board of Freeholders named a committee consisting of private citizens whose purpose was to study nursing home concepts. In February 1976, the committee named itself the Community Care Association of Hunterdon. In November 1976, the Association incorporated as a non-profit corporation. Since its inception, the Association has been a private charity dedicated to serving the needs of the elderly in the county.

FLEMINGTON PHONE DIRECTORY (1980)

.996-4725	Corrl Prntg Unit	782-4747
996-4672	Hunterdon County Democratic Committee	
996-4020	17 Bloomfld Av	782-1441
537-2545	Hunterdon County Garage W Main	638-6698
534-2307	Hunterdon Cnty Historical Socty	
537-2963	114 Main	782-1091
638-6045	Hunterdon County Legal Service Corp Atty	
534-4297	123 Main	782-7979
782-6956	HUNTERDON COUNTY MULTIPLE LISTING	
534-2240	SERVICE West Main St	782-1770
879-6261	HUNTERDON COUNTY NATIONAL BANK	
236-2926	Hunterdon Shopping Center Ofc	782-2616
.534-4297	Frenchtown Ofc 21 Bridge	782-2616
832-7879	High Bridge Ofc 40 Main	638-6195
.782-5568	Clinton Ofc Union Twp	782-2616
735-9200	Maintenance Sta Ofc Hwy 22	782-2616
782-3196	Lambertville Ofc	782-2616
.782-7066	Stockton Ofc	782-2616
.236-6259	Holland Twp Ofc Milfo	995-4168
.782-5397	Hwy 31 Ofc	782-2616
.534-9153	90 Main Ofc	782-2616
.782-1282	Hunterdon County Offices Main	782-4300
.735-6645	Or Call	788-1100
.876-9081		
.735-8396	**MOST COUNTY OFFICE NUMBERS BEGIN WITH 788.**	
.996-2535		
.735-8061		
	Adjuster	788-1142
.782-7443	Adult Education	788-1405
	Agriculture	788-1338
.782-8382	4-H Youth Development	788-1340
996-4132	Home Economic Agents	788-1342
.236-2010	Alcohol Treatment Center	782-3909
.735-5905	Audio Visual Aids	788-1425
735-8415	Board Of Elections	788-1193
ins	Board Of Chosen Freeholders	788-1102
.782-7827	Board Of Taxation	788-1173
	Buildings & Maintenance	788-1112
782-9597	Civil Defense	788-1176
	Community Care Association of	
782-3855	Hunterdon	782-4541
	County Clerk-General	788-1221
782-2090	County Clerk-Offices	
	Chancery Div & Matrimonials	788-1215
788-1648	District Court	788-1216
	Elections	788-1180
832-2104	Grand Jury Court Clerk	788-1217
537-2233	Index & Search Room	788-1217
	Juvenile & Domestic	788-1216

The Association is not associated with or a part of any governmental agency. Other than a telephone directory that lists the Community Care Association of Hunterdon under the general Hunterdon County listings,[1] plaintiff has not provided any support for his contention that he was a Hunterdon County employee.[2]

The judge's conclusion that plaintiff was not a Hunterdon County employee is supported by substantial credible evidence in the record. R. 2:11-3(e) (1) (A); Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974). There was no real issue as to any material fact and defendant Hunterdon County was entitled to summary judgment. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 75 (1954).

The other contentions raised by plaintiff are clearly without merit.[3] R. 2:11-3 (e) (1) (E).

Affirmed.

s/ R. Emille Cox
Clerk

---

[1] In order to reconstruct the missing court transcript, petitioner outlined for the Appellate Division his arguments supporting the County's legal responsibility for the Association: That it was incorporated only to protect the County from legal suits arising out of the Association's operation of a County nursing home, that the County was its sole creator, created so the County could avail itself of the use of Large Foundation funds from which the County itself was barred, that the County appointed all its members, assigned one of its elected officials to the Association as advisor, created it ad hoc to establish the need for a County nursing home, so it was in the undivided service of the County, that the County supplied it with office space, phone, etc., it in every detail of size and relative financial worth dependent upon its County parent.

[2] Ergo, this is, generously, a serious oversight.

[3] The other contentions were the trail judge's eight-year error as to when fraud was discovered and the County's new counsel's failure to file substitution papers. No indica-

APPENDIX 2C

DISMISSAL OF HUNTERDON COUNTY BY THE HUNTERDON COUNTY SUPERIOR COURT, COURT OF FIRST INSTANCE (11/8/91)

DISMISSAL OF THE IMMEDIATE EMPLOYER, COMMUNITY CARE ASSOCIATION OF HUNTERDON COUNTY, BY THE HUNTERDON COUNTY SUPERIOR COURT (5/15/92)

COUNTY DISMISSAL

GEBHARDT & KIEFER
21 Route 31
CN 4001
Clinton, NJ 08809
(908) 735-5161
Attorneys for Defendant

Filed Nov. 13, 1991

JOHN A. LANGDALE, Plaintiff(s), v. COUNTY OF HUNTERDON, et al Defendant(s).	SUPERIOR COURT OF NEW JERSEY LAW DIVISION HUNTERDON COUNTY DOCKET NO. HNT L 272 90 CIVIL ACTION ORDER

This matter having been brought before the Court by Gebhardt & Kiefer, attorneys for the Defendant, County of Hunterdon, on a motion for Summary Judgment and the Court having reviewed the moving papers and any opposing papers filed thereto, and for good cause shown;

It is on this 8th day of November, 1991, ORDERED that Defendant's motion for Summary Judgment be and is hereby granted and all claims against defendant in the above captioned matter are hereby dismissed, with prejudice; and

IT IS FURTHER ORDERED that a copy of this Order be served upon all parties to this action within seven (7) days of the date hereof.

s/ Edmund R. Bernhard, J.S.C.

ASSOCIATION DISMISSAL

McDONOUGH, KORN & EICHHORN
A Professional Corporation
555 Westfield Avenue, P.O. Box O
Westfield, New Jersey 07091
(908) 233-9040
Attorneys for Defendant, Community Care Association of Hunterdon County

Filed May 15 1992

JOHN A. LANGDALE, Plaintiff, vs. COMMUNITY CARE ASSOCIATION OF HUNTERDON, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUNTERDON COUNTY DOCKET NO. HNT L 272 90 CIVIL ACTION ORDER GRANTING SUMMARY JUDGMENT TO DEFENDANT, COMMUNITY CARE ASSOCIATION OF HUNTERDON COUNTY

JUDGE: Honorable Edmund R. Bernhard, J.S.C.
DATE OF MOTION: Friday, May 1, 1992 at 9:00 a.m.
PARTIES PRESENT OR REPRESENTED: John A. Langdale, appearing pro se, and Anthony M. Tracy, Esq., appearing on behalf of defendant, Community Care Association of Hunterdon County.

ORDERED:

1. That the various submissions of the plaintiff setting forth his account of the facts underlying this matter are hereby recognized as certifications in opposition to the defendant's motion for summary judgment.
2. That summary judgment is hereby granted in favor of defendant, Community Care Association of Hunterdon County, dismissing with prejudice the plaintiff's claim for worker's compensation as this claim is time-barred under N.J.S.A. 34:15-51[1] and because, pursuant to N.J.S.A. 34:15-49, the Superior

[1] It is argued this paragraph in the order is repugnant to the Constitution, no citation of NJS 34:15-51 acceptable when an employer's misrepresentation and claim obstruction are at issue. NJS 34:15-51 must be amended to suspend itself in such cases.

Court of New Jersey, Law Division, is without jurisdiction over claims for workers' compensation benefits.

3. That summary judgment is hereby granted in favor of defendant, Community Care Association of Hunterdon County, dismissing with prejudice the plaintiff's claim for fraud as the plaintiff has failed to adequately establish that he reasonably relied upon a false representation made by the defendant or agents[2] thereof to his detriment[3] and because such a claim is time-barred under N.J.S.A. 2A:14-1.[4]
4. That the tolling provision of N.J.S.A. 2A:14-21, which permits tolling of certain statutes of limitations where the claimant lacks the ability and capacity, due to mental affliction, to pursue his lawful rights, is inapplicable with respect to the plaintiff's fraud claim as the plaintiff has not shown that he suffered from any psychological afflictions when his cause of action for fraud arose.[5]
5. A copy of this Order shall be served upon John A. Langdale within 7 days of the date of this Order.

DATE OF ORDER: May 15, 1992 s/ Edmund R. Bernhard, J.S.C.

OPPOSED ✓
UNOPPOSED _____

Reasons set forth on the record at the time the motion was argued

[2] Judge Bernhard allowed himself to conclude no reliance was made on defendants'-respondents' misrepresentations by distorting one of petitioner's answers to an interrogatory: Judge Bernhard takes out of context "As regards O'Brien's opinion that fault barred my claim, no." [I did not rely on it] (p. 25, 5/92 transcript) The actual interrogatory at Question 26 reads: "Did you rely on any representations . . .?" and petitioner's answer was, "Absolutely, that the insurance agent was filing a W.C. claim. As regards O'Brien's opinion . . . ."

[3] This Hunterdon trial court was presented with extensive proofs of the degree to which the employer's fraudulent claim obstruction destroyed an entire life and resulted in hundreds of thousands of dollars in real damages.

[4] Please refer to Appendix 5 here laying bare the 8-year error under which this judge was reasoning. Whereas the employer's obstruction and fraud was discovered in 1989, not 1981 as Judge Bernhard mistook, as yet no time bar can be put on petitioner's claim by NJS 2A:14-1, such blatant error calling into question the Appellate Division personnel who affirmed.

[5] The documents that follow in Appendix 3 were given to defense attorneys who composed this order so, quite probably, here is a calculated falsehood to destroy petitioner's right to prosecution under NJS 2A:14-21.

APPENDIX 3

PROOFS OF MENTAL ILLNESS AT THE TIME PETITIONER'S CAUSE OF ACTION WAS ACCRUING

The order dismissing petitioner's immediate employer, the Association, was composed by its counsel who states:

> [P]laintiff has not shown that he suffered from any psychological afflictions when his cause of action for fraud arose. (Point 4 of a 5/15/92 order, here p. A-11)

The documents contained in this appendix were in the possession of those individuals, an Anthony Tracy, Esq. in particular, who authored the above quote.

But respondents' defacement of the evidence is yet worse, they and Hunterdon's court having proofs of petitioner's unemployment since his work accident, an affidavit from the ex-wife indicating neurological/psychiatric care was sought as early as November, 1977, the attempt at another occupation in retail, the failure of that attempt in 1978, Dr. Langdale's wife separating from him in 1978, the loss of all his life savings by 1981, and his fall into abject poverty, his psychiatric commitment (cf. this appendix), biographical evidence confirming a decade of vagrancy thereafter, among which were social-service and medical debts from 1981 until 1990, a number of medical reports diagnosing permanent paranoid schizophrenia, exhibits detailing homes and personal property lost, a certificate of neurological and psychiatric disability signed by petitioner's physician in 1981, and The Social Security Administration's findings of a total disability.

And still that above quote accepted into a court order.

AFFIDAVIT

From: Elizabeth A. Langdale, mother of John A. Langdale
To: Whom it may concern
Re: John A. Langdale's mental condition and cause.
Date: Oct. 25, 1989

Between 1967 and 1984 I was teaching abroad and my contact with John was by letter and yearly home leave visits. In 1977 I began to receive disturbed letters from him and the 1978 home leave was equally disturbing. He was ranting, completely irrational at times, and beginning to distance himself from everybody and everything he ever cared about.

I was told that as a result of his 1977 car accident he had suffered a concussion. The next thing that indicated a problem was his neurologist at the time recommending he change careers given problems with his work. Soon afterwards his life totally fell apart -- loss of reason, business failure, divorce -- and this is what I observed in the summer of 1978. I was at a loss. Why the change?

He went down hill gradually. He went on welfare. Then almost complete withdrawal. In spite of pleas that he seek psychiatric help, he refused saying he was doing nothing wrong; he believed people were out to "get" him even though he was trying to live a good life.

In 1984 he was a derelict. Here was a man who, in 1977, was a successful young professional with a Ph.D.,

his own home, a family. Then, suddenly, this tragedy -- loss of pride, loss of self-esteem, loss of reality, deeply disturbed. Somehow he has managed to survive the mental and physical anguish. How much longer that sense of survival will last, I cannot comprehend.

The first real ray of hope came in 1987 when he turned up in Maimi and went to the Community Mental Health Center. He was recognizing at last the need for professional help albeit sporadic on his part. Then restless, frustrated (symptomatic of his condition) he went to Washington somehow and somehow believed he would find the answer there.

For 12 years he has been mentally ill, confused, and at times his reasoning is channeled into irrational processes. His illness is of such complexity and so deep-seated that it must make diagnosis extremely difficult and lengthy for a professional to probe through the surface appearance of rationality. Because of all this, he has been in no condition to undertake seeking or pursuing his rights in any matter.

What he should have now, as he is surfacing, is to have basic needs met and, above all, a supportive environment and continuing professional help with in-depth treatment.

Since I am retired and living on Social Security (no pension), I can supply none of these things, least of all intensive therapy and a room of his own to help restore some self-esteem. I can

be only his sounding board as attested to by hundreds of letters and give John my constant assurance of my steadfast love.

For years I have agonized over the reason for his condition and always come to the same conclusion. I attribute its onset to that concussion from the accident in 1977 that may have triggered a chemical imbalance in the brain. It is the only explanation I have been able to come up with.

What I have written is just a skeleton of the events. It does not begin to cover the heartbreaking details accompanying a breakdown.

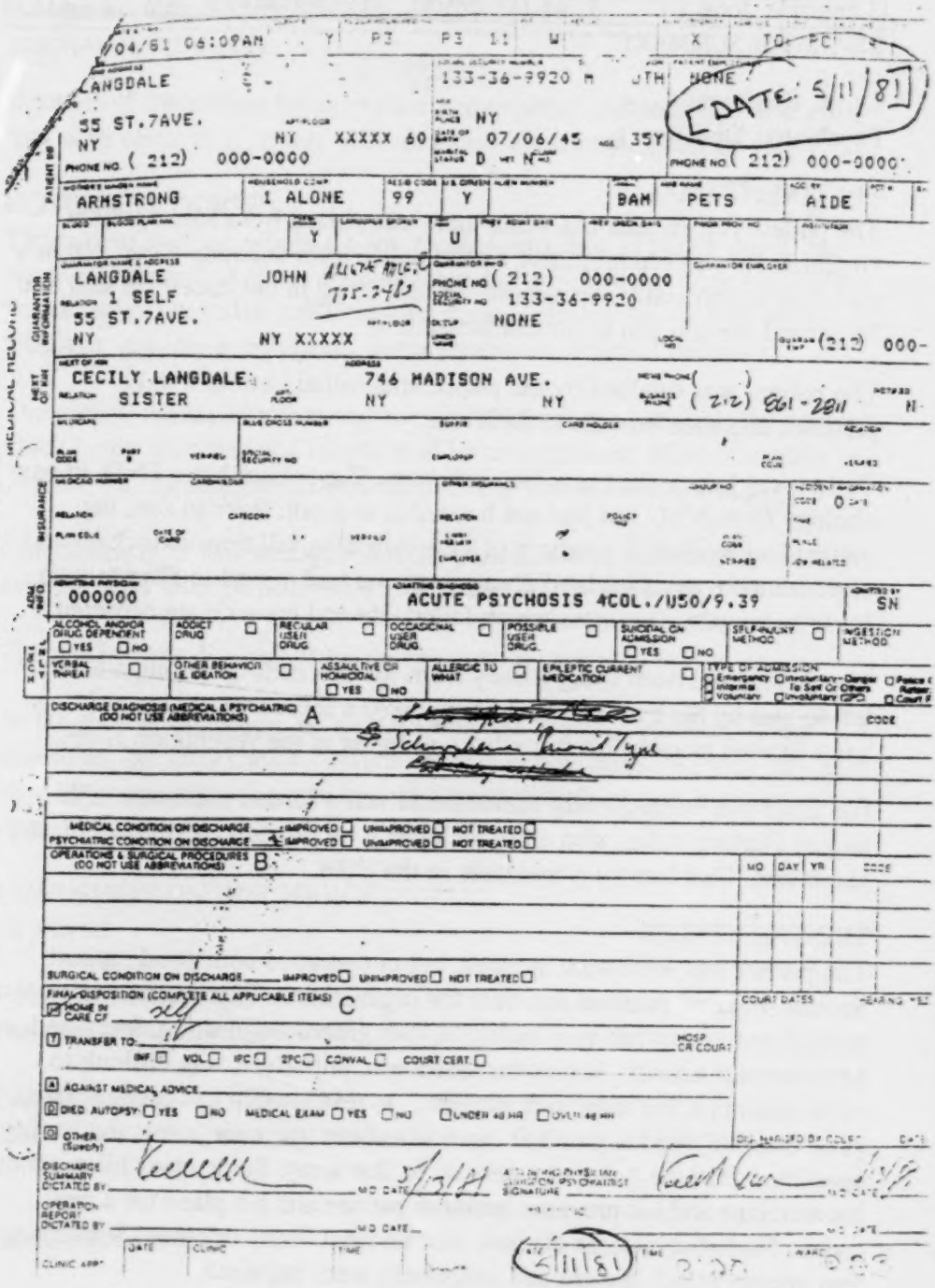
Elizabeth A. Langdale
1215 Whitehead Street
Key West, Florida 33040

County of Monroe
State of Florida

Sworn and subscribed to before me this 25th day of October 1989.

s/ E ---- R ----
Notary Public

RECORD OF 1981 INVOLUNTARY COMMITMENT TO BELLE-VUE PSYCHIATRIC HOSPITAL



Bellevue

PATIENT NAME	AGE	SEX	DATE ADM.	DISH. DATE	WARD	MED. R
Langdale, John		M	5/4/81	5/11/81	P3	811

DISCHARGE SUMMARY

Dr. K. Kirshbaum
Psychiatric Division

PERTINENT DATA:
The patient is a 36 year old white male transferred from Metropolitan Hospital. He was brought there by the police after shooting a cap gun in a taxi, that intentionally had almost run him down in the street. He said that he carried the cap gun to protect himself.

The patient was subdued by the police and initially brought to eh precinct, and then brought to Bellevue.

The patient has no past psychiatric history. The patient has a Ph.D. in psychology from NYU and had not been able to work. Prior to this, the patient had worked at a variety of jobs including full time consultant and organizational psychiatrist. Subsequently, he had moved to Florida with his wife to open a business which failed. He and his wife are divorced.

The patient had been using money from the proceeds of selling a house left to him by his aunt and then having sold a second mortgage and only has a limited amount left from that and living at the Wellington Hotel.

His sister was subsequently contacted as was a former classmate of his named Darlene Adler, also a psychologist who provided additional history about him. That history is available in the chart.

MENTAL STATUS:
The patient was somewhat agitated, but cooperative with good rapport. Speech required external structure for organization. Was at times circumstantial and somewhat over inclusive with grandiose ideation. Increased psychomotor activity. Somewhat histrionic. Initially, it was difficult to elicit delusions, but they were present., in relationship to concerns about good and evil and his previous concerns about star wars, army and having appointed Darlene Adler as a general in that army. Some other ideas about his marriage and his previous business partner and his plans for a new career. No hallucinations elicited. Not suicidal. Fully oriented. Sensorium was grossly intact. Insight and judgement were impaired.

continued . . . .

Bellevue

PATIENT NAME	AGE	SEX	DATE ADM.	DISH. DATE	WARD	MED. R
Langdale, John						

DISCHARGE SUMMARY

Because of the patient being evasive and guarded and selective in his history with distortions, it was difficult to get an accurate point of view.

HOSPITAL COURSE:
The patient was not placed on any medications, and as noted above, his sister and Darlene Adler were contacted and confirmed a deteriorating 3-4 year course. They also confirmed the above delusions as well as some religious, grandiose delusions. Some previously unusual behavior.

The patient remained no management problem in the hospital. He became much better groomed and calmer and better organized. Kind of sealing over any of the original, delusional thinking that one could elicit.

Consequently, it was arranged that the patient would receive outpatient care and was referred ultimately to a doctor at 260-6594.

The patient was discharged to his own custody for such follow up.

At the time of discharge, he was denying and evading questions about delusions, but information from those around him suggested they still may have been present, but not in any way necessitating continuing inpatient care.

CONDITION ON DISCHARGE:
Improved

FINAL DIAGNOSIS:
Paranoid schizophrenia

DISPOSITION:
Discharged in own custody. No medication. Follow up as above.

Dr. Kirshbaum/pf

APPENDIX 4
BELOW IT WAS CLEARLY ESTABLISHED RESPONDENTS BROKE THE LAW

While respondents' answers to subpoenas transparently revealed only those minutes which might have contained mention of petitioner's early 1979 claim application had been purged, the "Confirmation of Interview" here is sufficient to show notice was given well prior to a 10/4/79 statutory deadline. More, as owner of the accident vehicle, respondent-employer received a copy of 1977's accident report here. But more, Treasurer's reports indicate petitioner's inability to work after his accident in drastically reduced work hours and minutes record the Treasurer moving for Dr. Langdale to be switched from full-time to part-time status less than two months after his work accident.

At the very least, then, it was established in Hunterdon's court that respondents violated NJS 17:29B-4(9) most flagrantly at (b) "Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies" and (c) "Failing to adopt and implement reasonable standards for the prompt investigation of claims . . . ."

Please note several irregularities in the "Confirmation of Interview" other than that the interviewer confesses full awareness of a work accident: 1. This employer's administrator points out, twice, his own failure to ascertain the cause of Dr. Langdale's disability; 2. While no effort was made to identify the cause of disability, this interview's total focus, considerable trouble was taken to have every correction initialed betraying a larger than in-house audience was being played to; and 3. No mention is made of the infamous statute of limitations then only four or five months away.

CONFIRMATION OF INTERVIEW DATE 5/20/79

NAME: Charles Suppo, Secretary & Director
ADDRESS: Hunterdon Co Community Care Association

John Langdale was employed on 4/7/76 as
Ex Director, Secretary-Asst Treasurer of the
above organization. Salary was 480.77 weekly
His duties would be determining the needs of
the elderly, would make up reports, do surveys,
visit nursing homes. From 4/76 to the end of 1977
he mainly worked on preparing a report referance(?) the
needs of the elderly. He also had administrative duties
as director -- report to the board of trustees. He would
travel throughout the county. In 12/77 his status
changed from full to part time, took a position as a
consultant. Reason he gave was he was unable to work
full time due to headaches he was suffering, specific cause
not stated. His final pay was 3/28/78. At that
time he resigned, reason was that he was
relocating to Florida to set up a Boutique. He
was also still complaining of headaches was
was suffering which were affecting his work;
could not function when having the headaches.
He did have an auto accident in 11/77, was driving
a company car. I have no records referance (CS) the origin
of (?) headaches xxx xxx xxxxxxxx. CS xxxxx of xxx xxxxxxxxx.
xxxxx. CS
I have read the above, understand it & it is true
Witness s/x Charles Suppo
[?]

CONFIRMATION OF INTERVIEW

CONFIRMATION OF INTERVIEW DATE 2/21/78

NAME: Charles P Lyons Secretary - Director

ADDRESS: Jefferson Co Commissioners Office Louisville

Jim Langdale was employed on 4/1/76 as Executive Secretary - Asst Treasurer of the above organization. Salary was $20,000 annually. His duties would be determining the needs of the elderly, would make application, do surveys and nursing homes. From 4/76 to the end of 1977 he mainly work on preparing a report reference the needs of the elderly. He also had administrative duties as Secretary - agent to the Board of Directors. He would travel through out the county. In 1/77 his duties changed from full to part time, took a position as a consultant. Reason he gave was he was unable to work full time due to headaches he was suffering, quality came out stated. His final pay was 3/24/78. At the time he resigned, reason was that he was starting to Illinois to set up a Boutique. He was also still complaining of headaches were was suffering which were effecting his work, could not function when having the headaches. He had been in an auto accident in which was driving a company car. I have no records reference to the exp. headaches I [illegible] of the headaches.

CB

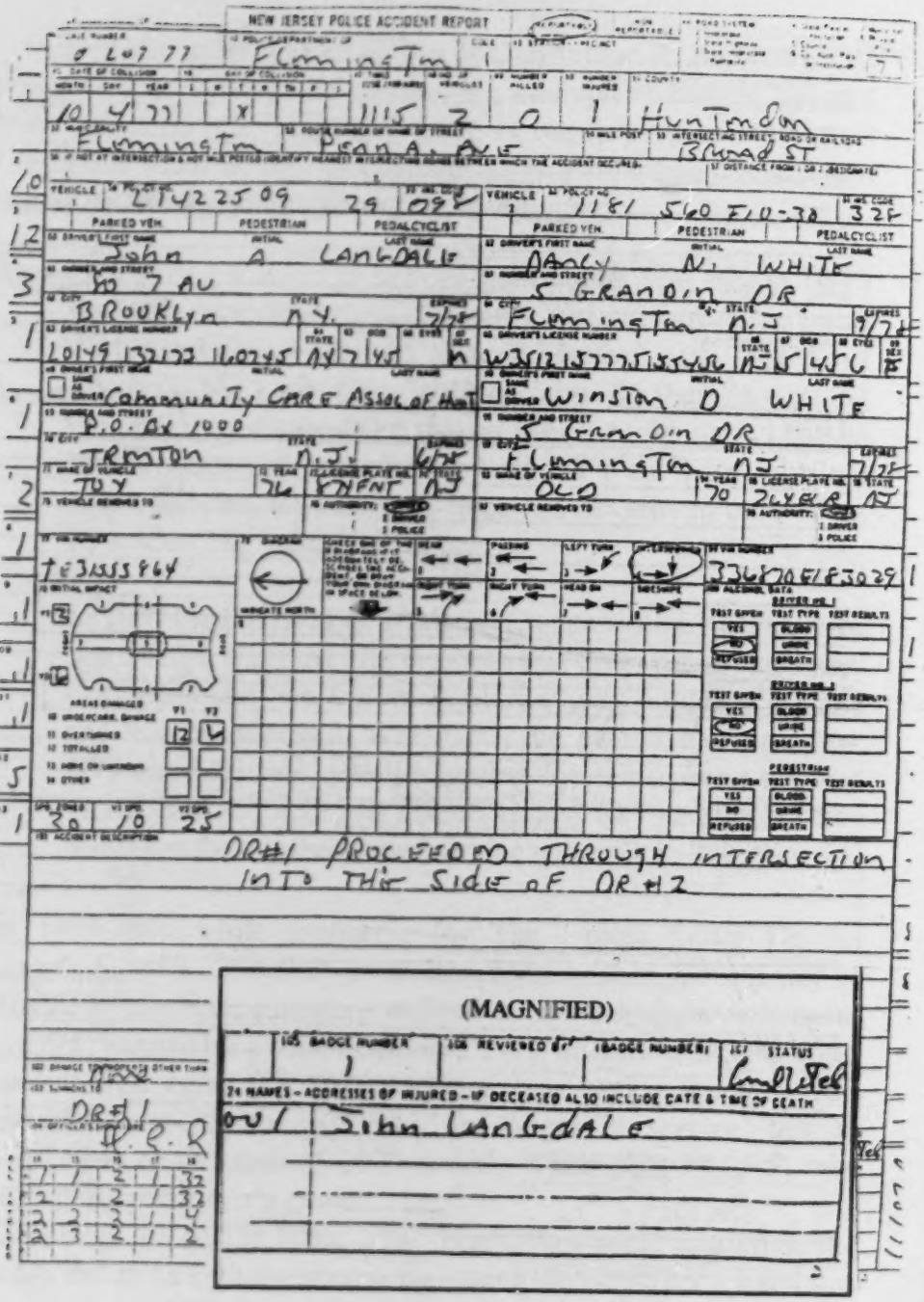
I have read the above, understand I [illegible]

Witness

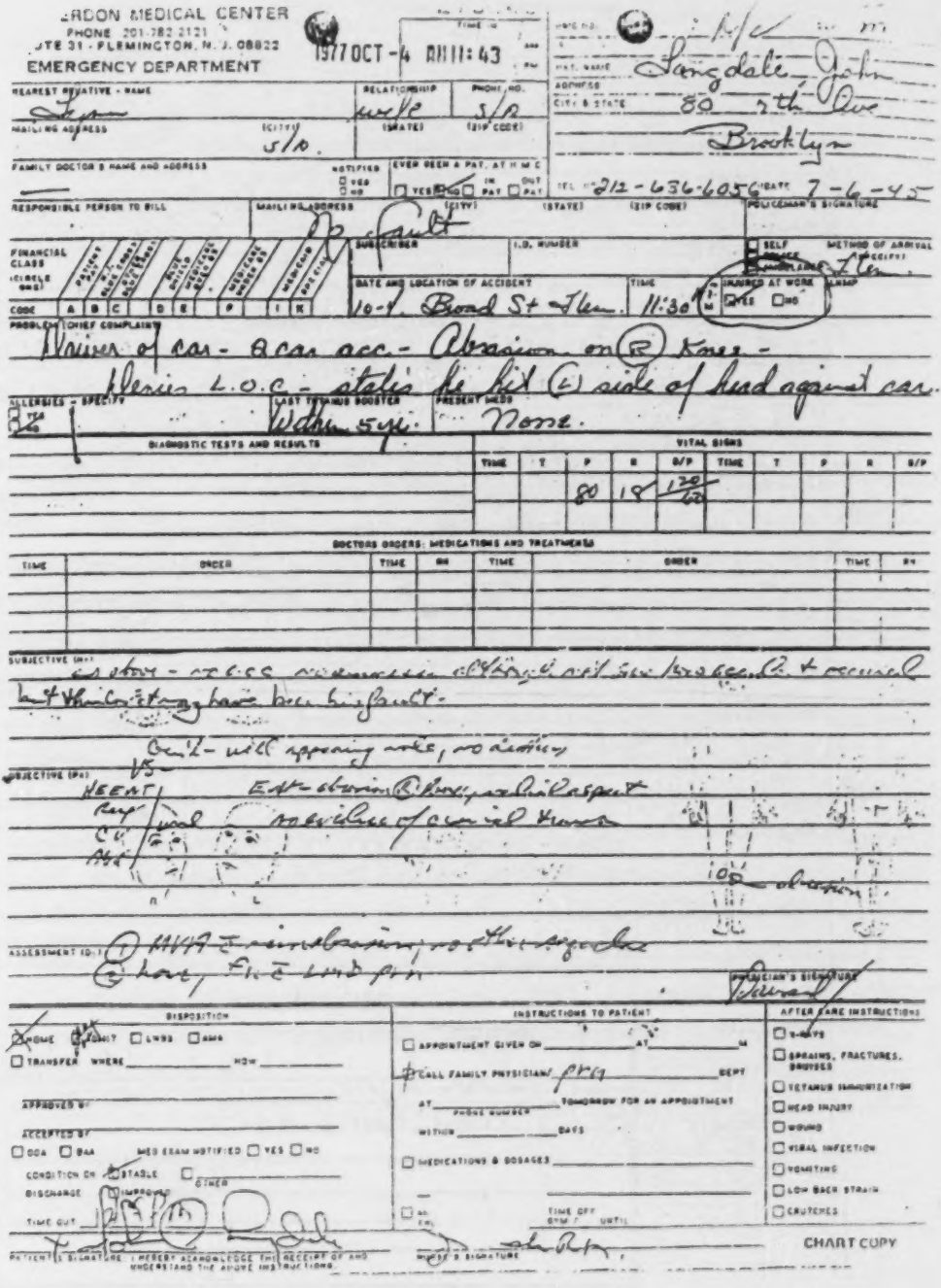
Charles Lyons

[A-21]

POLICE ACCIDENT REPORT
THE EMPLOYER RECEIVED



HOSPITAL EMERGENCY ROOM RECORD



HUNTERDON MEDICAL CENTER
PHONE 201-782-2121
ROUTE 31 - FLEMINGTON, N. J. 08822
EMERGENCY DEPARTMENT

1977 OCT -4 AM 11:43

Langdale, John
80 7th Ave
Brooklyn
212-636-6056
7-6-45

Wife
Same
Wife
Fell
Waiver of car - 8 car acc. - Abrasion on (R) knee - Hx of L.O.C. - states he hit (L) side of head against car.
Within 5 yrs.
None.

VITAL SIGNS
80 18 130/70

Subjective (HPI)
Patient - involved in MVA - was driving car & was struck on (L) side of head by another car. Denies LOC but thinks may have been briefly.
Oriented - well appearing male, no distress

Objective (PE)
VS
HEENT
Neck
CV
Abd
EAC - abrasion (R) knee, no bilat exudate
moderate edema of scalp & forehead
105 - abrasion

Assessment (ICD-9)
1) MVA - minor head trauma, no other injuries
2) abrasion, R knee

Physician's Signature

DISPOSITION
Home
Family
LWBS
AMA
Transfer Where
How
Approved by
Accepted by
DOA
BAA
MED EXAM NOTIFIED YES NO
Condition on
Stable
Other
Discharge
Improved
Time Out
Patient's Signature I HEREBY ACKNOWLEDGE THE RECEIPT OF AND UNDERSTAND THE ABOVE INSTRUCTIONS

INSTRUCTIONS TO PATIENT
Appointment given on at
Call family physician prn dept
at tomorrow for an appointment
phone number
within days
Medications & Dosages
Time off work / school until
Nurse's Signature

AFTER CARE INSTRUCTIONS
X-rays
Sprains, fractures, bruises
Tetanus immunization
Head injury
Wound
Viral infection
Vomiting
Low back strain
Crutches

CHART COPY

APPENDIX 5
PROOF THE HUNTERDON COUNTY COURT MADE AN ERROR OF EIGHT YEARS

In the same interrogatory Hunterdon's Edmund R. Bernhard, JSC misquoted to believe the employer's misrepresentations had not been relied on (cf. footnote 2, p. A-11 here), petitioner makes it very clear when he first discovered his employer had cheated him out of his Workers' Compensation entitlements:

> [I]n 1979 I was led to believe from about 2 or 3/79 to 10/79 that the Association's Chairman's (Jones) insurance agent ("Millbank [sic.-Milbank], Botz & Martin," now "FIRM" of Wyckoff, N.J.) was filing such a claim. So they kept telling me until they disappeared around 10/79. At the time, I had no idea a statute of limitations would fall then. They certainly didn't tell me, for reasons I hope are obvious to both of us. [Question 18]
>
> In 1990 the Division of Workers' Compensation informed me that a claim was never filed. About that time, it was uncovered that "Millbank [sic.], Botz & Martin" was an unlisted entity and that its principal, Wm. Botz, did switch addresses btw. 5/79 and 5/81 [sic.-1980] retaining the same phone number. That meant the recording I heard around 10/79 telling me they had taken the number out of service was a trick. [Question 21]

In 1989-1990 while preparing for The United States District Court's CA#89-2354 JHP, petitioner discovered in The Library of Congress telephone-directory collection that his employer's agent had not changed his phone number in 1979 whereas petitioner's last contact with same was a recorded message saying the agent had relocated and his number was no longer in service, this in September or October of 1979 exactly when NJS 34:15-51 was destroying petitioner's claim.

On page 27 of the May, 1992 Hunterdon court transcript, the judge makes an eight-year error by stating the employer's fraud was discovered in 1981.

APPENDIX 5 (cont'd)

The Hunterdon judge's eight-year error is highlighted in this appendix at page A-27. It is an error fatal to all that judge's statute-of-limitations opinions because NJS 2A:14-1's statutory limit does not begin to run until any fraudulence is discovered. (cf. p. 4, Footnote 1 here).

Given that the employer's misrepresentations, concealment of statutory limit, and obstruction of claim were not discovered until 1989-1990, the Hunterdon County Court can be seen in 1992 violating petitioner's right to prosecute a recently-discovered fraudulence:

> [T]he plaintiff['s] . . . claim is time-barred under N.J.S.A. 2A:14-1. [Point 3, Appendix 2C, p. A-11 here]

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUNTERDON COUNTY
DOCKET NO. L272-90

JOHN A. LANGDALE,
PLAINTIFF,

-V-

HUNTERDON COUNTY ET ALS.,
DEFENDANTS.

TRANSCRIPT OF
MOTION HEARING

PLACE: Hunterdon County Court
71 Main Street
Flemington, New Jersey 08822

DATE: May 1, 1992

BEFORE:
HON. EDMUND R. BERNHARD, J.S.C.

TRANSCRIPT ORDERED BY:
JOHN A. LANGDALE, PLAINTIFF/PRO SE

APPEARANCES:
JOHN A. LANGDALE, PLAINTIFF/PRO SE

ANTHONY TRACEY, ESQUIRE
On Behalf of Defendant Community Care Association

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

J & J COURT TRANSCRIBERS, INC.
TRANSCRIBER ELAINE HOWELL
116 Youngs Road
Trenton, New Jersey 08619
586-2311 (609) FAX NO. 587-3599

[County Judge E.R. Bernhard, JSC, speaking] November 6, 1988. The fourth report, the date is illegible.

Those reports, at that particular period of time, indicate that plaintiff had an incapacitating illness, whatever that may very well mean. And, I mean no disrespect to any medical condition that Mr. Langdale suffered. But that particular definition does not mean any of the case law criteria for tolling a statute of limitations.

There are no expert reports or certifications that would suggest the plaintiff met the necessary disability provisions that would toll the statute of limitations if, in fact, either the tolling provision was applicable or it should have been lifted.

In other words, there is no competent evidence in the record upon which this court can rely, even if appropriate, to lift the bar of the statute of limitations.

Plaintiff indicates that he recognized there was a fraud being perpetrated upon him in 1981. He indicated that he learned in '79 that there was a two year statute of limitations and recognized the problem in 1981.* I would regard that as the period of time when the fraud cause of action would have occurred. Obviously, this claim would have been barred in 1987, and in any event, by June 28th, 1990, when the complaint was filed, or 1991, when the amended complaint was filed.

Therefore, I find that one, there are not

---

*Petitioner's note: Another error is here. Petitioner learned of the statute of limitations in 1981.

Supreme Court, U.S.
FILED
JUL 17 1995
Clerk

(2)

No. 94-2070

In The

Supreme Court of the United States

October Term, 1995

JOHN A. LANGDALE,

Petitioner,

v.

HUNTERDON COUNTY AND COMMUNITY CARE ASSOCIATION OF HUNTERDON,

Respondents.

On Petition For Writ Of Certiorari To The New Jersey Supreme Court (Docket #38,972 Denial Of Petition For Certification)

RESPONDENT'S BRIEF IN OPPOSITION

SHARON H. MOORE, ESQ.
Counsel of Record
GEBHARDT & KIEFER, P.C.
1318 Route 31
CN 4001
Clinton, N.J. 08809
Tele. (908) 735-5161

Attorneys for Respondent, Hunterdon County

JUDITH A. KOPEN, ESQ.
On the Brief

COCKLE-LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Statement of Facts 1

Reasons for Denying the Writ 3

POINT I: 3

THE PETITION CONTAINS MISSTATEMENTS OF FACT AND LAW WHICH PERTAIN TO THE QUESTION OF WHETHER THE WRIT SHOULD BE GRANTED.

POINT II: 5

THE QUESTIONS PRESENTED FOR REVIEW BY PETITIONER WERE DECIDED ON ADEQUATE AND INDEPENDENT STATE GROUNDS.

POINT III: 6

PETITIONER FAILED TO RAISE HIS FEDERAL CLAIMS IN THE TRIAL COURT OR AT THE APPELLATE DIVISION AND DID NOT RAISE IT PROPERLY TO THE NEW JERSEY SUPREME COURT.

POINT IV: 7

RESPONDENT, HUNTERDON COUNTY, WAS DISMISSED FROM THE CASE ENTIRELY ON INDEPENDENT AND ADEQUATE STATE GROUNDS.

Conclusion 8

TABLE OF AUTHORITIES

Page

CASES

Bilotti v. Accurate Forming Corp., 188 A. 2d 24, 39 N.J. 184 (1963) 5

Michigan v. Tyler, 436 U.S. 499 (1978) 6

Parker v. North Carolina, 397 U.S. 790 (1970) 6

Shebar v. Sanyo Business Systems, 526 A. 2d 1144, 218 N.J. Super. 111 (App. Div. 1987) 5

Webb v. Webb, 451 U.S. 493 (1981) 7

STATUTES

N.J.S.A. 34:15-51 5

MISCELLANEOUS

U.S. Sup. Ct. R. 15.1 7

STATEMENT OF FACTS

Plaintiff/Appellant, John A. Langdale, was involved in an automobile accident on October 4, 1977 while engaged in the course of his employment with the Community Care Association of Hunterdon County, hereinafter "The Association". As a result of the accident, plaintiff sustained minor injuries for which he was treated and then released from a nearby hospital.

Approximately two weeks following his accident, plaintiff began treating with a neurologist due to recurring headaches. In November 1977, he resigned from his full-time employment with the Association and began to work part-time as a consultant. At some point in early 1978, plaintiff terminated his part-time employment with the Association and moved to Florida with his wife and son where he started a small business.

In January 1979, plaintiff returned to New Jersey. Purportedly suffering from various psychological afflictions, plaintiff allegedly contacted Richard O'Brien, then an officer of the Association, in an effort to file a workers' compensation claim. It was plaintiff's position that these psychological afflictions were directly attributable to the injuries he received in the October 1977 automobile accident. According to plaintiff, Mr. O'Brien advised him that he was not entitled to workers' compensation benefits because the accident was his fault. However, notwithstanding this advice, plaintiff continued to make efforts to file a claim with both the Association's insurance

agent, Millbank, Botz & Martin, Inc., and the Association's workers' compensation insurer. Evidently, representatives of both entities assured plaintiff that a claim was being filed on his behalf.

For reasons which are not clear, plaintiff ceased pursuing a claim for workers' compensation benefits after October 1979. Nevertheless, he resumed his efforts to file such a claim in August 1981, only to find that the claim was then time-barred by the statute of limitations.

On August 25, 1981, plaintiff filed a claim for disability benefits with the New Jersey Department of Labor and Industry. This claim was subsequently denied by the Department on October 5, 1981, because the alleged disabilities were work-related and, thus, not compensable.

On August 23, 1989, plaintiff filed suit in the United States District Court for the District of Columbia. The Complaint was dismissed by Order of the Honorable John H. Pratt dated January 23, 1990. Plaintiff then filed suit in the Superior Court of New Jersey, Law Division which resulted in Summary Judgments in favor of defendants, Community Care Association of Hunterdon and Hunterdon County, and plaintiff further pursued the matter by way of appeal to the Appellate Division and then to the New Jersey Supreme Court. Plaintiff's theory appears to be that a fraud was perpetrated upon him by various individuals associated with the Community Care Association of Hunterdon County which prevented him from filing suit to collect workers compensation benefits, to which he feels he was due, until after the statute of limitation date had fallen. As to defendant, Hunterdon County, plaintiff appears to assert that he was an

employee of Hunterdon County, rather than an employee of the Community Care Association of Hunterdon. The Appellate Division found that the lower court judge's conclusion that plaintiff was not a Hunterdon County employee was supported by substantial credible evidence in the record and that plaintiff did not provide any support for his contention that he was a Hunterdon County employee. The Appellate Division, therefore, affirmed Summary Judgment granted to Hunterdon County, as well as affirming Summary Judgment granted to the Community Care Association, substantially for the reasons set forth by Judge Bernhard in his oral opinion of May 1, 1992. Plaintiff's Petition for Certification to the New Jersey Supreme Court was denied.

REASONS FOR DENYING THE WRIT

POINT I

THE PETITION CONTAINS MISSTATEMENTS OF FACT AND LAW WHICH PERTAIN TO THE QUESTION OF WHETHER THE WRIT SHOULD BE GRANTED

The brief submitted by petitioner in support of the writ contains misstatements of fact and references to "facts" which do not appear of record before this Court, which confuse the record and bear on the questions of the issues which may properly be before this Court.

The petitioner presents questions for review, as well as his "statement of the case" and "argument" all of which operate under the assumption that the employer committed a fraud upon the plaintiff. However, it was

clearly established in the courts below that no fraud was proven. (See Pa10-11 and Pa4, 5 & 7.[1])

The initial question that petitioner should have asked was whether any fraudulent misrepresentations on the part of certain employees, directors or officers of the Community Care Association resulted in the petitioner's failure to file his worker's compensation claim. However, as was found by the court below, petitioner defeated his own fraud claim by representing in his answers to Interrogatories that he did not rely upon the alleged misrepresentations and that he continued to pursue his worker's compensation claim after the alleged misrepresentations. (Ra1) Accordingly, the Law Division and the Appellate Division of the Superior Court of New Jersey properly found petitioner's fraud claim had no merit and the Supreme Court of New Jersey denied certification.

Further, plaintiff indicates in his "statement of the case" at page 3 of his Petition, "whereas employer/ respondents found themselves undeniably applied to well prior to *N.J.S.* 34's [sic] October 1979 deadline . . . " There is nothing in the record to support the statement that petitioner applied for worker's compensation benefits prior to the October 1979 deadline. Petitioner continues in the following paragraph of his statement of the case to assert that "Hunterdon's court insisted *N.J.S.* 34:15-51 requires an injured worker apply directly to the State's Division of Worker's Compensation within 24 months *regardless* of whether the employer is guilty of

---

[1] Cites to Respondent's Appendix are referred to as Ra ___, Petitioner's Appendix as Pa ___.

criminal misrepresentation, regardless that such contributes to a claimant's illness, regardless of mental disorder." (Emphasis in original) Again, there is nothing in the record or anywhere else which found petitioner's employer guilty of criminal misrepresentation or which found that any alleged misrepresentation contributed to any illness from which petitioner was suffering.

POINT II

THE QUESTIONS PRESENTED FOR REVIEW BY PETITIONER WERE DECIDED ON ADEQUATE AND INDEPENDENT STATE GROUNDS

Petitioner is questioning a state worker's compensation statute, N.J.S.A. 34:15-51, as well as a claim for actionable fraud. The requisite elements of actionable fraud are well established in New Jersey law. They are (1) the defendant's false representation, (2) his knowledge of or belief in its falsity, (3) his intention that plaintiff rely, (4) plaintiff's reasonable reliance, and (5) plaintiff's consequent damage. *Bilotti v. Accurate Forming Corp.*, 188 A. 2d 24, 39 N.J. 184, 206 (1963); *Shebar v. Sanyo Business Systems*, 526 A. 2d 1144, 218 N.J. Super. 111, 117 (App. Div. 1987).

The Orders of the Law Division and the Appellate Division addressed the issues relating to worker's compensation and fraud and were both grounded completely in state law as no federal claim was raised at that point in time. (Pa4, 5, 7, 10 & 11) They held that, under New Jersey law, petitioner's claim for worker's compensation

was time-barred, that the Superior Court had no jurisdiction over worker's compensation claims, that the elements of fraud had not been proven and that the fraud action was time-barred.

As set forth in Pa2, Petition for Certification of the Judgment to the Supreme Court of New Jersey was denied by that Court. Therefore, the New Jersey Supreme Court never considered the matter on the merits. It was only in petitioner's Petition for Certification to the Supreme Court of New Jersey that any federal question was raised. Therefore, the decisions of the New Jersey courts in this matter were made entirely on adequate and independent state grounds and, as such, the Supreme Court of the United States has no jurisdiction to review this matter. *Michigan v. Tyler,* 436 U.S. 499 (1978); *Parker v. North Carolina,* 397 U.S. 790 (1970).

POINT III

PETITIONER FAILED TO RAISE HIS FEDERAL CLAIMS IN THE TRIAL COURT OR AT THE APPELLATE DIVISION AND DID NOT RAISE IT PROPERLY TO THE NEW JERSEY SUPREME COURT.

Petitioner did not first raise any federal claim in this matter until his Petition for Certification to the New Jersey Supreme Court. In his Petition to the New Jersey Supreme Court, petitioner alleged due process violations of his rights under the Fifth and Fourteenth Amendments to the United States Constitution. However, the New Jersey Supreme Court denied petitioner's Petition for Certification. (Pa2)

There is a presumption that silence by a State Court on a federal question is deemed to be for want of proper presentation. *Webb v. Webb,* 451 U.S. 493 (1981). Since petitioner did not raise any federal claim in a timely and proper fashion in the state courts, the Supreme Court should not grant certiorari. U.S. Sup. Ct. R. 15.1.

POINT IV

RESPONDENT, HUNTERDON COUNTY, WAS DISMISSED FROM THE CASE ENTIRELY ON INDEPENDENT AND ADEQUATE STATE GROUNDS

It should also be pointed out that this respondent, Hunterdon County, was dismissed from this case on grounds entirely unrelated to any alleged fraud committed by agents of the Community Care Association of Hunterdon, or to the disposition of any claim for worker's compensation. Respondent, Hunterdon County's connection with this case was that petitioner claimed that Hunterdon County was petitioner's employer in that the Community Care Association of Hunterdon was listed in a telephone listing under the general Hunterdon County listings. However, proofs were submitted to the Courts below which established that the Community Care Association was a separately incorporated, independent organization, and not an arm of Hunterdon County government. These factual findings are not being appealed by petitioner.

CONCLUSION

For the foregoing reasons, John A. Langdale's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

SHARON H. MOORE, ESQ.
(Counsel of Record)
JUDITH A. KOPEN, ESQ.
GEBHARDT & KIEFER, P.C.
1318 Route 31
CN 4001
Clinton, N.J. 08809
Tele. (908) 735-5161

Attorneys for Respondent, Hunterdon County

EXCERPTS FROM INTERROGATORIES

25. Were any representations made to you by any agent of the defendant regarding workers' compensation benefits? If so, identify each individual and the precise representation which he or she made to you.

Yes. I was told by the Association's Counsel O'Brien that fault would bar my claim. He, being a lawyer, knew reasonable fault does not bar a claim.

I was given an insurance agent's phone number by Jones & O'Brien (Chairman & Counsel).

I was told by that agent from about 2 or 3/79 until 10/79 that a claim was being processed (Agent: Millbank, Botz & Martins, Wyckoff, N.J. now named "Firm").

26. Did you rely on any representation made to you by any agent of the defendant as identified in interrogatory #25?

Absolutely, that the insurance agent was filing a W.C. Claim. As regards O'Brien's opinion that fault barred my claim, No. I believed at least unemployment insurance was available, but I was very mentally disturbed and confused. When the insurance agent disappeared in or about 10/79, if I had been competent, I should have brought legal action.

(3)

No. 94-2070

Supreme Court, U.S.
FILED
JUL 27 1995
OFFICE OF THE CLERK

In The
Supreme Court of the United States
October Term, 1995

JOHN A. LANGDALE,
Petitioner,
vs.
HUNTERDON COUNTY and COMMUNITY CARE ASSOCIATION OF HUNTERDON,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT

Respondent's Brief in Opposition

Peter L. Korn
(Counsel of Record)

James R. Korn
Christopher K. Costa

McDonough, Korn & Eichhorn
Park Place Legal Center
959 S. Springfield Avenue
Springfield, NJ 07081
(201) 912-9099
Counsel for Respondents
Community Care Association
of Hunterdon County

BEST AVAILABLE COPY

QUESTION PRESENTED

1. Should certiorari be granted for the review of a State Court decision where all issues have been resolved on adequate and independent state grounds and Petitioner has failed to present a valid Constitutional question.

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Contents	ii
Table of Authorities	iii
Constitutional and Statutory Provisions	1
Statement of the Case	3
Reasons for Denying the Writ	6
POINT I:	
THE PETITION CONTAINS A MIS-STATEMENT OF LAW THAT, WHEN CORRECTED, ELIMINATES PETITIONER'S CONSTITUTIONAL CLAIM	6
POINT II:	
THE CLAIM OF PETITIONER THAT JUDGE BERNHARD MADE AN EIGHT YEAR ERROR IN DETERMINING WHEN PETITIONER DISCOVERED THE ASSOCIATION'S ALLEGED FRAUD DOES NOT PROVIDE GROUNDS FOR THIS COURT TO GRANT CERTIORARI BECAUSE PETITIONER'S CLAIM RAISES NO CONSTITUTIONAL ISSUE AND IS MERITLESS	7
Conclusion	9

TABLE OF AUTHORITIES

Page

CASES

Dreier Co. v. Unitronix Corp.,
527 A.2d 875, 218 N.J. Super. 260
(App. Div. 1986) 7

Michigan v. Tyler, 436 U.S. 499 (1978) 7

Parker v. North Carolina,
397 U.S. 790 (1970) 7

STATUTES

28 U.S.C.A. § 1257 (West 1993) 1, 7

N.J.S.A. 2A:14-1 (West 1987) 3, 5

N.J.S.A. 2A:14-21 (West 1987) 3

N.J.S.A. 34:15-49 (West 1988) 2, 4

N.J.S.A. 34:15-51 (West 1988) 2, 4, 6

CONSTITUTIONAL AND STATUTORY PROVISIONS

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Supreme Court Case Selection Act provides:

> **State Courts; certiorari** [a] final judgements or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States. 28 U.S.C.A. § 1257(a) (West 1993).

New Jersey Workers' Compensation Law provides:

> Every claimant for compensation under Article 2 of this chapter (§ 34:15-7 et seq.) shall, unless a settlement is effected or a petition filed under the provisions of 34:15-50 of this Title, file a petition in duplicate with the division in Trenton, within 2 years after the date on which the accident occurred, or in case an agreement for compensation has been made between the employer and the claimant, then within 2 years after the failure of the employer to make payment pursuant to the terms of this agreement; or in case a part of the compensation has been paid by the employer, then within 2 years after the last payment of compensation except that repair or replacement of prosthetic devices shall not be construed to extend the time for filing of a claim petition. . . . N.J.S.A. 34:15-51 (West 1988).

The New Jersey Workers' Compensation Law also provides:

> The Division of Workers' Compensation shall have the exclusive original jurisdiction of all claims for workers' compensation benefits under this chapter. N.J.S.A. 34:15-49 (West 1988).

The New Jersey Statute on Limitation of Civil Actions provides:

> Every action at law for trespass to real property, for any tortious injury to real or personal property, for taking, detaining, or converting personal property, for replevin of goods or chattel, for any tortious injury to the rights of another not stated in § 2A:14-2 and § 2A:14-3 of this Title, or for recovery upon

> a contractual claim or liability, express or implied, not under seal, or upon an account other than one which concerns the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced within 6 years next after the cause of any such actions shall have accrued.
>
> . . . .
>
> N.J.S.A. 2A:14-1 (West 1987).

New Jersey Law on Limitation of Civil Actions also provides:

> If any person entitled to any of the actions or proceedings specified in § 2A:14-1 to § 2A:14-8 . . . is or shall be, at the time of any such cause of action or right or title accruing, under the age of 21 years, or insane, such person may commence such action or make such entry, within such times as limited by said sections, after his coming to or being of full age or of sane mind. N.J.S.A. 2A:14-21 (West 1987).

STATEMENT OF THE CASE

On October 4, 1977, Petitioner John Langdale was involved in an automobile accident while engaged in the course of his employment with the Community Care Association of Hunterdon County (the "Association"). Approximately two weeks following the accident, Petitioner began treating with a neurologist for recurring headaches. In November 1977, he resigned from his full-time employment with the Association and began to work part-time as a consultant for the Association. At some

employment and moved to Florida with his wife and son, where he started a small business.

Petitioner returned to New Jersey in January 1979, purportedly suffering from various psychological afflictions. Sometime thereafter, Petitioner allegedly contacted the Association to pursue a Workers' Compensation claim for his psychological problems, which he attributed to his 1977 automobile accident.

For reasons which are not clear, Petitioner ceased pursuing a claim for Workers' Compensation benefits after October 1979. He resumed his efforts to file such a claim in August 1981, at which point the claim was time-barred by the statute of limitations.

Petitioner alleged in his Complaint that he failed to pursue his claim in a timely fashion because of fraudulent misrepresentations made by representatives of the Association. However, Edmund R. Bernhard, Judge of the Superior Court of New Jersey, Law Division, dismissed Petitioner's fraud claim summarily on the ground that it was time-barred and Petitioner failed to establish a prima facie case for fraud because Petitioner, by his own admission, did not rely on the alleged misrepresentation. (RA5).

More specifically, Judge Bernhard ordered that Petitioner's action be dismissed with prejudice because his claim for Workers' Compensation benefits was time-barred under N.J.S.A. 34:15-51 and pursuant to N.J.S.A. 34:15-49, the Superior Court of New Jersey, Law Division, was without jurisdiction over claims for Workers' Compensation benefits. Judge Bernhard further ordered that Petitioner's fraud claim be dismissed with prejudice because Petitioner failed to adequately establish that he

reasonably relied upon the representation of the Association or agents thereof to his detriment and because Petitioner's fraud claim is time-barred under N.J.S.A. 2A:14-1. Judge Bernhard finally ruled that the tolling provision which permits tolling of certain statutes of limitations where the claimant lacks the ability and capacity to pursue his or her lawful rights due to mental affliction was inapplicable with respect to Petitioner's fraud claim because Petitioner had not shown that he suffered from a psychological affliction when his cause of action for fraud arose, a requirement of that statute, and had not provided sufficient proof of his affliction. N.J.S.A. 2A:14-1. (RA11-13).

Accordingly, Judge Bernhard found that the Petitioner, without legally actionable excuse, failed to bring a timely Workers' Compensation claim and failed to bring a timely fraud claim. The Appellate Division, affirmed the decision of Judge Bernhard for substantially the same reasons. (RA2).

Subsequently, Petitioner couched the same arguments raised below in Constitutional terms before the New Jersey Supreme Court in his Petitioner for Certification. There, he argued that the New Jersey Workers' Compensation Law, in allowing employers to commit fraud by delaying employee claims, violates the Fifth and Fourteenth Amendments of the Constitution. The New Jersey Supreme Court denied Mr. Langdale's Petition, with costs.

REASONS FOR DENYING THE WRIT

POINT I

THE PETITION CONTAINS A MISSTATEMENT OF LAW THAT, WHEN CORRECTED, ELIMINATES PETITIONER'S CONSTITUTIONAL CLAIM.

The arguments Petitioner raises before this Court have no merit and provide no basis for the granting of certiorari, pursuant to 28 U.S.C. § 1257. Petitioner challenges the application of the two year statute of limitations of the New Jersey Workers' Compensation Law on the grounds that it allows an employer to frustrate a worker's opportunity to receive benefits by delaying the filing of that worker's claim. See N.J.S.A. 34:15-51. As a result of this potential injustice, Petitioner asserts that the Workers' Compensation statute of limitations violates the Fourteenth Amendment of the Constitution of the United States. However, the Petitioner's constitutional challenge of the Workers' Compensation Law is based upon a misunderstanding of the operation of that law. Namely, Mr. Langdale construes the law to impose a duty on the employer of an injured worker to file that worker's petition for workers' compensation benefits. However, N.J.S.A. 34:15-51 clearly provides that the claimant (i.e. the worker) must file a petition with the Worker's Compensation Division in Trenton and such petition must be filed within two years of the date of the accident from which the claim arose.

Accordingly, Petitioner's writ should be denied because the Workers' Compensation Law does not by its language and application provide employers with the opportunity to perpetrate fraud upon their workers by failing to bring a workers' compensation claim on behalf

of a worker injured in a work-related accident. The statute instead places the onus on the worker to file the claim.

POINT II

THE CLAIM OF PETITIONER THAT JUDGE BERNHARD MADE AN EIGHT YEAR ERROR IN DETERMINING WHEN PETITIONER DISCOVERED THE ASSOCIATION'S ALLEGED FRAUD DOES NOT PROVIDE GROUNDS FOR THIS COURT TO GRANT CERTIORARI BECAUSE PETITIONER'S CLAIM RAISES NO CONSTITUTIONAL ISSUE AND IS MERITLESS.

Pursuant to 28 U.S.C.A. § 1257, the United States Supreme Court does not have jurisdiction over matters that were decided on adequate and independent state grounds. Michigan v. Tyler, 436 U.S. 499 (1978); Parker v. North Carolina, 397 U.S. 790 (1970). By alleging that Judge Bernhard committed an error of eight years in determining when the Petitioner discovered the Association's alleged fraud, Petitioner raises no federal or Constitutional question. Therefore, this Court has no jurisdiction to hear this allegation.

Moreover, the claims of Petitioner are groundless. In assessing when the statute of limitations on a fraud claim begins to run, the Court considers when the Petitioner discovered or should have discovered the alleged fraud. Dreier Co. v. Unitronix Corp., 527 A.2d 875, 883, 218 N.J. Super. 260, 274 (App. Div. 1986). ("In cases of fraud thi[s] period of limitation begins to run only from the discovery of the fraud or the time when, by reasonable diligence, it could have been discovered"). The Petitioner indicated in his discovery responses that he learned in 1979 that there was a two year statute of limitations and

that he recognized that the limitation period had run in 1981. In light of this information, Judge Bernhard found that the Petitioner was aware that a fraud was being perpetrated upon him in 1981. Accordingly, Judge Bernhard correctly found that the six year statute of limitations for fraud began to run in 1981 and that Mr. Langdale's 1990 action was therefore time-barred.

It should also be noted that the issue of the statute of limitations for Mr. Langdale's fraud claim need not be reached because Mr. Langdale failed to establish one of the basic elements of fraud. Namely, as Judge Bernhard correctly found, Mr. Langdale did not establish that he relied on the alleged misrepresentations of the agents of the Association and its insurance company. In support of his finding, Judge Bernhard noted on the record:

> Moreover, in response to defendant's interrogatory no. 26, which asks did you rely on any representation made to you by any agent of the defendant, as identified in a prior interrogatory, which is no. 25, the plaintiff answered, "as regards [the Association representative's] opinion that fault barred my claim, no." (RA11)

Therefore, by Langdale's own admission, no fraud was committed by the Association.

CONCLUSION

The Petition of John A. Langdale presents no question that this Court should address, no issue that is worthy of its attention. The Petition for certiorari should be denied.

Respectfully submitted,

Peter L. Korn
(Counsel of Record)

James R. Korn
Christopher K. Costa

McDonough, Korn & Eichhorn
Park Place Legal Center
959 S. Springfield Avenue
Springfield, NJ 07081
(201) 912-9099
Counsel for Respondents
Community Care Association
of Hunterdon County

Dated: July 21, 1995

APPENDIX

TABLE OF CONTENTS

Page

Order of Supreme Court of New Jersey Denying Petition for Certification RA1

Decision of Superior Court of New Jersey, Appellate Division, Affirming Law Division Decision RA2

Order of Superior Court of New Jersey, Law Division, Granting Summary Judgement to Defendant Community Care Association of Hunterdon County RA5

Opinion of Judge Bernhard Granting Summary Judgment to Defendant Community Care Association of Hunterdon County RA7

SUPREME COURT OF NEW JERSEY
C-599 September Term 1994
38,972

JOHN A. LANGDALE,
Plaintiff-Petitioner,

v. ON PETITION FOR CERTIFICATION

HUNTERDON COUNTY
and COMMUNITY CARE
ASSOCIATION OF
HUNTERDON COUNTY,
Defendants-Respondents. Filed Feb. 28, 1995

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-5941-91 having been submitted to this Court, and the Court having considered the same;

IT IS ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Robert N. Wilenz, Chief Justice, at Trenton, this 27th day of February, 1995.

s/Stephen Townsend
CLERK OF THE SUPREME COURT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-5941-91T3

JOHN A. LANGDALE,
Plaintiff-Petitioner,

v.

HUNTERDON COUNTY
and COMMUNITY CARE
ASSOCIATION OF
HUNTERDON COUNTY,
Defendants-Respondents.

Filed May 26, 1994

s/R. Emile Cox
Clerk

Submitted: April 27, 1994 - Decided: May 26, 1994

Before Judges Havey and A.M. Stein

On appeal from the Superior Court of New Jersey, Law Division, Hunterdon County.

John A. Langdale, appellant pro se.

Gebhardt & Kiefer, attorneys for respondent Hunterdon County (Judith A. Kopen on the brief).

McDonough, Korn & Eichhorn, attorneys for respondent Community Care Association of Hunterdon County (James R. Korn, of counsel; Anthony Tracy on the brief).

PER CURIAM

The order of the Law Division entering summary judgment in favor of defendant Community Care Association of Hunterdon County dated May 15, 1992, is

affirmed substantially for the reasons set forth by Judge Bernhard in his oral opinion of May 1, 1992.

By prior order dated November 8, 1991, Judge Bernhard entered summary judgment in favor of defendant Hunterdon County because plaintiff was not a county employee. The basis for plaintiff's assertion that he was an employee of Hunterdon County at the time of the accident is because the 1990 Flemington telephone directory listed the Community Care Association of Hunterdon under the general Hunterdon County listings.

The judge's explanation for dismissing Hunterdon County is not available because the tape used to record the hearing could not be transcribed because it was blank.

Hunterdon County's moving papers included the certificate of incorporation of the Community Care Association of Hunterdon. Hunterdon County is not mentioned in the certificate of incorporation. Defendant also provided an uncontradicted affidavit of John W. Anaya who is the president of the Community Care Association of Hunterdon. In the affidavit, Anaya explained the origin of the Association.

In 1975, the Hunterdon County Board of Freeholders named a committee consisting of private citizens whose purpose was to study nursing home concepts. In February of 1976, the committee named itself the Community Care Association of Hunterdon. In November 1976, the Association incorporated as a non-profit corporation. Since its inception, the Association has been a private charity dedicated to serving the needs of the elderly in the county.

The Association is not associated with or a part of any governmental agency. Other than a telephone directory that lists the Community Care Association of Hunterdon under the general Hunterdon County listings, plaintiff has not provided any support for his contention that he was a Hunterdon County employee.

The judge's conclusion that plaintiff was not a Hunterdon County employee is supported by substantial credible evidence in the record. R. 2:11-3(e)(1)(A); Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974). There was no real issue as to any material fact and defendant Hunterdon County was entitled to summary judgment. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 75 (1954).

The other contentions raised by plaintiff are clearly without merit. R. 2:11-3(e)(1)(E).

Affirmed.

s/R. Emile Cox
Clerk

JOHN LANGDALE,	:	SUPERIOR COURT OF
Plaintiff,	:	NEW JERSEY
	:	LAW DIVISION
vs.	:	HUNTERDON COUNTY
	:	DOCKET NO. HNT L 272 90
COMMUNITY CARE	:	CIVIL ACTION
ASSOCIATION OF	:	ORDER GRANTING SUM-
HUNTERDON,	:	MARY JUDGMENT TO
Defendant.	:	DEFENDANT, COMMUNITY
	:	CARE ASSOCIATION OF
	:	HUNTERDON COUNTY

JUDGE: Honorable Edmund R. Bernhard, J.S.C.
DATE OF MOTION: Friday, May 1, 1992 at 9:00 a.m.
PARTIES PRESENT OR REPRESENTED: John A. Langdale, appearing pro se, and Anthony M. Tracy, Esq., appearing on behalf of defendant, Community Care Association of Hunterdon County.

ORDERED:

1. That the various submissions of the plaintiff setting forth his account of the facts underlying this matter are hereby recognized as certifications in opposition to the defendant's motion for summary judgment.

2. That summary judgment is hereby granted in favor of defendant, Community Care Association of Hunterdon County, dismissing with prejudice the plaintiff's claim for worker's compensation as this claim is time-barred under N.J.S.A. 34:15-51 and because, pursuant to N.J.S.A. 34:15-49, the Superior Court of New Jersey, Law Division, is without jurisdiction over claims for workers' compensation benefits.

3. That summary judgment is hereby granted in favor of defendant Community Care Association of Hunterdon County, dismissing with prejudice the plaintiff's claim for fraud as the plaintiff has failed to adequately establish that he reasonably relied upon a false representation made by the defendant or agents thereof to his detriment and because such a claim is time-barred under N.J.S.A. 2A:14-1.

4. That the tolling provision of N.J.S.A. 2A:14-21, which permits tolling of certain statutes of limitations where the claimant lacks the ability and capacity, due to mental affliction, to pursue his lawful rights, is inapplicable with respect to the plaintiff's fraud claim as the plaintiff has not shown that he suffered from any psychological afflictions when his cause of action for fraud arose.

5. A copy of this Order shall be served upon John A. Langdale within 7 days of the date of this Order.

DATE OF ORDER: May 15, 1992

s/Edmund R. Bernhard, J.S.C.

OPPOSED_____ Reasons set forth on the record at
UNOPPOSED_____ the time the motion was argued

SUPERIOR COURT OF NEW JERSEY,
LAW DIVISION, HUNTERDON COUNTY
DOCKET NO. L272-90

JOHN A. LANGDALE,
Plaintiff,
v.

HUNTERDON COUNTY, ET AL.S.,
Defendants.

PLACE: Hunterdon County Court House
71 Main Street
Flemington, New Jersey 08822

DATE: May 1, 1992

BEFORE:

HON. EDMUND R. BERNHARD, J.S.C.

TRANSCRIPT ORDERED BY:

JOHN LANGDALE, PLAINTIFF/PRO SE

APPEARANCES:

JOHN LANGDALE, PLAINTIFF/PRO SE

ANTHONY TRACY, ESQ.
On Behalf of Defendant Community Care Association
of Hunterdon County

TRANSCRIPT OF MOTION HEARING, OPINION
[Argument Excluded]

All right. This is Defendant, Community Care Association of Hunterdon County's motion for summary judgment. This action was commenced when the Plaintiff, John Langdale filed a complaint on June 28, 1990, of [sic] the Defendant, Community Care Association was named as a defendant in an amended complaint, I believe filed on October 21, 1991, and remains as the only defendant in this action.

On October 4, 1977, plaintiff was involved in an automobile accident while engaged in the course of his employment with the Community Care Association of Hunterdon County. Plaintiff's central claim is for damages arising out of the on-the-job injuries or the injuries he sustained in that automobile action.

He claims that he is entitled to worker's compensation benefits and also has asserted a claim of fraud. He claims and argues here that he was intentionally defrauded out of his worker's compensation benefits by representatives of the Hunterdon County. Specifically as I understand, the only one named is Mr. Richard O'Brien. He has discussed the relationship both in his documents and here at oral argument with the agent as well as some discussions with the company.

The plaintiff alleges in his amended complaint that he failed to file a timely claim with the Division of Workmen's Compensation, because agents of the Association, that is the defendant Association, willfully and with premeditation, engaged him in protracted tactics of delay and actively concealed a statute of limitations from him.

Defendant argues that plaintiff's complaint should be dismissed as his claim for Worker's Compensation benefits is time barred under N.J.S.A. 34:15-51 which states that: "Every claimant for compensation under Article 2 of this chapter (Section 34:125-7, et seq.,) shall, unless a settlement is effected or a petition filed under the provisions of 34:15-50 of this title, file a petition in duplicate with the Division in Trenton within two years after the date on which the accident occur.

The plaintiff, in response, argues that due to his severe mental problems that occurred or injuries which occurred, the two year statute of limitation should be tolled, that's what has been argued in his papers.

Additionally, he argues that he met the conditions of N.J.S.A. 34:15-51, with regard to an interview with Mr. Charles Supko, which he has attached as an exhibit entitled, confirmation of an interview and submits that this clearly indicates his attempt to file a claim petition within a two year period.

In regard to the plaintiff's claim that he is entitled to worker's compensation benefit, the Court directs the parties attention to N.J.S.A. 34:15-49 which states: "The Division of Worker's Compensation shall have exclusive original jurisdiction of all claims for worker's compensation benefits under the statute, and additionally provides that any appeal from the Division of Worker's Compensation goes directly to the Appellate Division of the Superior Court.

Based on the foregoing, this court does not have jurisdiction to decide any claim for worker's compensation benefits albeit those leading to a lifting of the bar, or two year period described in the statute. Therefore, the

portion of plaintiff's complaint seeking workmen's compensation benefits must be dismissed and summary judgment is granted as to that aspect.

As t[o] the fraud allegations, the plaintiff asserts that Richard O'Brien, a former officer of the Community Care Association, intentionally misrepresented to the plaintiff in early 1979 that he was not entitled to worker's compensation benefits because the accident was his fault. That is Mr. Langdale's fault. The accident again, or the injury again, came about from an automobile accident which Mr. Langdale submitted a copy of the police report to me in one of his submissions.

The defendants argue that the plaintiff has not met the requisite elements of fraud, a fraud claim and the plaintiff's action for fraud is, likewise, time barred, under N.J.S.A. 2A:14-1, the applicable period of limitations, I believe, is six years.

It is well settled that the necessary elements of a fraud action, or the defendants false representation, the knowledge of its falsity, the intention that plaintiff rely on it, that plaintiff, in fact, reasonably did rely and the plaintiff's consequent injuries.

They are the elements of fraud set forth in two leading cases, Sussex Jewish Center versus Whale, 86 N.J. 619 (1981) and Chabar versus Sanyo Business Systems, 218 N.J. Super. 111, p. 117 (App. Div. 1987).

A review of the plaintiff's complaint, as well as the certifications or his submissions and plaintiff's interrogatory answers reveal that the plaintiff, in fact, did not rely on any misrepresentations or any representations that Mr. O'Brien made. After Mr. O'Brien made the alleged

misrepresentation in early 1979, the plaintiff continued in his efforts to obtain worker's compensation benefits.

In 1979, the plaintiff in his submission indicates that he had numerous contacts with an insurance agency from whom the Association purportedly obtained workers compensation policy and has indicated that after a number of communications, the agency for lack of a better term, disappeared and was unable to make phone contact.

Mr. O'Brien, with regard to his communications with the plaintiff may not have been helpful and may have, in fact, given faulty or erroneous advice with regard to the applicability of workmen's compensation benefits, but there is nothing to suggest that Mr. O'Brien's misrepresentations, albeit, whether they were innocent or on purpose, were relied on.

Moreover, in response to defendant's interrogatory number 26, which asks, did you rely on any representation made to you by any agent of the defendant, as identified in a prior interrogatory, which is number 25, the plaintiff answered, "As regards O'Brien's opinion that fault barred my claim, no."

Additionally there is nothing in the record before me that would indicated that the alleged fraud was the cause of the plaintiff's consequent damages, whatever damages he may have sustained by way of an injury which led to various problems he had came about as a result of the automobile accident that occurred in October of 1979.

In any event, I find that the complaint and the submissions fail to set forth the necessary elements of fraud.

In addition, the plaintiff asserts that his mental condition tolled the statute of limitations which are found in N.J.S.A. 2A:14-21. The parties agree that the tolling provision of N.J.S.A. 2A:14-21 are applicable to the six year statute of limitation for fraud. However, there are problems with tolling this particular period of limitation, specifically, the Supreme Court in Kyle versus Green Acres at Verona, Inc., 444 N.J. 100 (1965), foreclosed the tolling of the running of the limitations unless the plaintiff and using the words of the statute and the words of the Court was, insane, which means a mental disability at the time the cause of action occurred. However, they did carve out an exception which is one of equity, which I find it difficult to apply in this particular case.

Plaintiff, in support of his position that he suffered from what has been described, defined in the Kyle case, as a condition of mental derangement that prevented the sufferer from understanding his legal rights or instituting action, has provided various certifications, one of which came from his mother, who described his physical condition and what she observed at the time. I believe she was teaching in a foreign country and visited on various occasions and described various letters received from the plaintiff and what those letters indicated to her.

The defendant also attached various reports or documentation from the Department of Human Services from Miami and Washington, D.C. These reports were dated September 7, 1990 and September 22nd or 28th, 1989 and November 3, 1988. The fourth report, the date is illegible.

These reports, at that particular period of time, indicate that plaintiff had an incapacitating illness, whatever that may very well mean. And, I mean no disrespect to any

medical condition that Mr. Langdale suffered. But that particular definition does not mean any of the case law criteria for tolling a statute of limitations.

There are no expert reports or certifications that would suggest the plaintiff met the necessary disability provisions that would toll the statute of limitations if, in fact, either the tolling provision was applicable or it should have been lifted.

In other words, there is no competent evidence in the record upon which this court can rely, even if appropriate, to lift the bar of the statute of limitations.

Plaintiff indicates that he recognized there was a fraud being perpetrated upon him in 1981. He indicated that he learned in '79 that there was a two year statute of limitations and recognized the problem in 1981. I would regard that as the period of time when the fraud cause of action would have occurred. Obviously, this claim would have been barred in 1987, and in any event, by June 28th, 1990 when the complaint was filed, or 1991, when the amended complaint was filed.

Therefore, I find that one, there are not sufficient elements set forth in the complaint, nor do the submissions make out a cause of action based upon fraud and the statute of limitations is not tolled, therefore, summary judgment wise, on the fraud claim as well.